

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number: 16104-014001
CERTIFICATE OF MAILING BY EFS-WEB FILING I hereby certify that this paper was filed with the Patent and Trademark Office using the EFS-WEB system on this date: July 11, 2008 <u>July 11, 2008</u> Date of Deposit <u>[Signature]</u> Signature <u>Judith Witzel</u> Typed or Printed Name of Person Signing Certificate	Application Number 10/698,956	Filed October 31, 2003
	First Named Inventor Scholz et al	
	Art Unit 2121	Examiner Darrin D. Dunn
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a Notice of Appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record <u>43,352</u> (Reg. No.)</p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below'.</p>		
<p><input type="checkbox"/> Total of no. forms are submitted.</p>		

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	: Scholz et al	Art Unit	: 2121
Serial No.	: 10/698,956	Examiner	: Darrin D. Dunn
Filed	: October 31, 2003	Conf. No.	: 8804
Title	: BLOCKING INPUT WITH DELAYED MESSAGE		

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE APPEAL REQUEST FOR REVIEW

Applicants submit this request pursuant to the New Pre-Appeal Conference Pilot Program. Applicants may address additional matters on appeal in any subsequent appeal brief.

Claims 1-20 are pending, with claims 1, 10, 11, 14 and 15 being independent. Claims 1-3, 10, 11 and 14-15 stand rejected under § 103(a) as unpatentable over U.S. 7,047,426 (Andrews) in view of U.S. 20050125545 (Cheshire). Claims 4, 12 and 17 stand rejected under § 103(a) as unpatentable over Andrews in view of Cheshire and U.S. 20040187104 (Sardesai). Claims 5 and 16 stand rejected under § 103(a) as unpatentable over Andrews in view of in view of Cheshire and U.S. 20040187104 (Sardesai). Claim 8 stands rejected under § 103(a) as unpatentable over Andrews in view of in view of Cheshire and U.S. 20020057285 (Nicholas III). Claims 9, 13 and 19 stand rejected under § 103(a) as unpatentable over Andrews in view of in view of Cheshire and U.S. 6,854,012 (Taylor).

The rejection of the pending claims is legally and factually wrong because the references fail to disclose several features of the present claims.

As the Federal Circuit has said, “the inquiry is not whether each element existed in the prior art, but whether the prior art made obvious *the invention as a whole* for which patentability is claimed.” *Hartness Intern. Inc. v. Simplimatic Eng’g Co.*, 819 F.2d 1100, 1108 (Fed. Cir. 1987)(emphasis added). In the final office action, the piecemeal treatment of the subject matter in the independent claims has led the Examiner to ignore language in the claims, and to issue a rejection that is impermissibly based on hindsight from the present invention.

The present disclosure relates to informing a user about communications between a client device and a server device. Indeed, the title of the present application is: “Blocking input with

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delayed message,” and examples described therein elaborate on this theme. Particularly, it is described with reference to FIG. 1 that

The client device 104 then initiates a communication over the network 106 for the server device 102 to take some action. The server-provided framework code 124 ***begins blocking input to the client device 104.*** ...

The time before a response is received from the server device 102 may depend on the amount of data being transmitted in the communication, a condition of the network 106 and on how quickly the server device finishes the action. ***If the communication is finished before a specific time***, the input blocking ceases without a message being presented to the user. ***If the communication lasts longer than a specific time***, the server-provided framework code 124 causes a message 300 to be presented to the user (see Figure 3).

Spec. 4:29—5:8 (emphasis added unless otherwise noted.)

Thus, the code 124 mentioned in the above example blocks user input and delays a message to the user (because the message is not displayed until it has been determined that the communication has lasted too long.) This can be an advantage because the background section notes that it can be frustrating for the user if communications last a long time without explanation, yet for a brief communication, a message that flashes by can also be distracting.
Spec. 1:19-29.

The claims are directed to methods, systems and computer-readable media relating to the above features. Claims 1 and 10 can be considered as relating to the server side of the communication, and claims 11 and 14 to the client side. Claim 15 is directed to a computer system having a server device and a client device.

Particularly, claim 1 recites a method of informing a user about communications between a client device and a server device. The method recites that executable code is provided from a server device to a client device. Note that the code is characterized by the following. First, the code is stored on the client device and is “executed during each of subsequent communications between the client device and the server device”. This is important because as described in the example mentioned above, it is important to inform the user properly when any of the communications lasts too long. The claim reflects this by stating that the code, when executed, “blocks the client device from receiving user input during the communications between the client device and the server device.”

Second, if any of the communications between the client device and the server device lasts longer than a specific time, the code “causes a message to be presented to a user of the client device”. This corresponds to delaying the message to the user that a client-server communication is in progress, until the point when the communication is delayed.

That is, the code provided from the server device is executed during “each” of the client-server communications, and can present a message in case of delay. Such a code is not disclosed by the references of record, even when their disclosures are combined.

The remaining independent claims include features relating to those discussed above. Independent claim 10 is directed to a computer program product and recites the method of claim 1. The method in independent claim 11 recites that executable code is received on a client device and stored thereon, and that, per the executable code, input is blocked and a message can be presented in case of delay. The computer program product in independent claim 14 explicitly recites the steps of blocking an input and presenting a message. Independent claim 15, finally, recites that the server device has framework code that establishes a client-server framework for communications, and that the client device has framework code provided from the server device that is executed, blocks communications and presents a message in analogy with the above. Again, none of the references, alone or in combination, discloses code provided from a server device that is executed during each client-server communication and can present a message in case of delay.

Andrews discloses a portable computing device communication system and method. Essentially, Andrews' system and method includes a host computer and monitors whether a portable device has become “missing”; if so, the host computer can perform a “responsive action”. Andrews abstract. Andrews describes that the portable device can check in with the host computer (step 322 in FIG. 13), and that the host computer then can query a database for the current status of the portable device and for a requested action. Andrews 19:14-52. Two such actions are described with reference to step 372: to lock up the portable device or to verify the user. Andrews 20:7-26. However, the client device does not contain any code provided from a server device that is “executed during each client-server communication”. Indeed, the check-in procedure by Andrews' client device apparently is not performed during each communication. Moreover, the lock-up procedure and the verify user procedure do not “block[] the client device

from receiving user input during the communications between the client device and the server device”.

The examiner's interpretation of the present claim language as allegedly reading on a lock-up procedure and a verify user procedure ignores the phrases “be executed during each of subsequent communications” and “blocks the client device from receiving user input during the communications”. This interpretation is not supported by the claim language or the present disclosure and is therefore not correct. Applicants submit that the rejection fails to consider the invention as a whole, as required by *Hartness*.

Cheshire was cited as allegedly teaching “caus[ing] a message to be presented to a user of the client device” if “any of the communications between the client device and the server device lasts longer than a specific time”. Actually, the portion of Cheshire referred to by the Examiner (Cheshire 0006, lines 8-16) describes that an application program in a computer system can attempt to establish a dial-up connection to a remote internet service provider; if a default timeout time expires, an operating system of the computer system can send a message to the application program and also display a message to a user. Cheshire 0006.

However, this description appears in the background section, and Cheshire in fact strongly *advises against* using this approach because it “ruins the transparency of the process, thus frustrating the user”. *Id.* Indeed, Cheshire's disclosure is directed toward “*preventing* a timeout from reaching a network host”. *See* Cheshire title. Thus, Cheshire is directed toward not displaying a timeout message—the exact opposite of what the final office action cites the reference as showing. As such, Applicants submit that a person of ordinary skill would not have combined the cited portion of Cheshire with Andrews.

In any event, even if Cheshire were combined with Andrews, the combined disclosure would still not disclose the subject matter missing from Andrews, namely a code provided from a server device that is executed during each client-server communication, blocks user input and that can present a message in case of delay.

It follows that Andrews and Cheshire do not disclose a feature required by all independent claims. It therefore cannot be said that the independent claims, or any of the dependent claims are rendered unpatentable by the references.

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In view of the above, all of the claims should be in condition for allowance. A formal notice of allowance is thus respectfully requested.

Please apply any charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: _____

7/11/08



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